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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,238	02/06/2004	Holger Tank	63,227A	8680
25212	7590	03/26/2007	EXAMINER	
DOW AGROSCIENCES LLC 9330 ZIONSVILLE RD INDIANAPOLIS, IN 46268			CLAYTOR, DEIRDRE RENEE	
			ART UNIT	PAPER NUMBER
			1617	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/26/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/774,238	TANK ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Renee Claytor	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 February 2007.
- 2a) This action is **FINAL**.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3 and 5-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,6 and 7 is/are rejected.
- 7) Claim(s) 5 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | Paper No(s)/Mail Date. _____.                                     |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____.                         |

### **DETAILED ACTION**

Applicant's amendments to claim 1 are sufficient to overcome the 35 U.S.C. 112, first paragraph rejection and it is hereby withdrawn.

Applicant's arguments filed on 2/6/2007 have been fully considered but they are not persuasive. Applicant's argue that Okano et al. disclose liquid agricultural chemical compositions comprising 1) a water soluble agricultural chemical, including the monomethylamine or the dimethylamine salts of glyphosate, 2) a quaternary surfactant and 3) an acid salt and that the acid salt is essential to impart stability to the composition. This argument is not found to be persuasive because Okano et al. teach that the addition of the surfactant to the agricultural chemical imparts the excellent effect of enhancing the efficacy of the agricultural chemical (Col. 5, lines 12-14 and lines 49-52); therefore, stability is obtained by the addition of the surfactant and the acid salt is added to enhance the amount of the agricultural chemical (Col. 5, lines 61-63). Furthermore, the agricultural chemical composition of the Okana et al. reference teaches that he composition is comprised of all the different elements, meaning that elements can be added or deleted without materially affecting the properties of the composition.

Applicant's argue that Beestman et al. disclose corrosion inhibited compositions of glyposage salts in combination with various surfactants and that Beestman et al. requires the presence of a thio compound as a corrosion inhibitor. This argument is not found persuasive because Beestman et al. teach that the use of thio compounds as inhibitors of metal corrosion in herbicidal compositions does not significantly diminish

post-emergent herbicidal activity of the composition (Col. 8, lines 20-25). Furthermore, the composition of Beestman et al. teaches that the herbicidal regulant composition is comprised of the different elements, meaning that elements can added or deleted without materially affecting the properties of the composition. Applicant's argument that Beestman et al. do not specifically disclose the mono(methylamine) or the mono(dimethylamine) salts of the present invention; however, Beestman et al. teach that di(methylamine) salts are useful in the present invention (Col. 10, lines 27-68).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In view of Applicant's amendments and arguments, the following modified rejections are being made.

### **Objections**

Claim 5-6 is objected to as being dependent upon a rejected base claim.

***Claim Rejections – 35 U.S.C. § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okano et al. (U.S. Patent 6,030,923) in view of Beestman et al. (U.S. Patent 4,159,901).

Okana et al. teach herbicidal compositions containing water, glyphosates, including monomethylamine or dimethylamine, and a cationic quarternary ammonium surfactant (see Table 1, Invention product 3 and 4). Absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, "consisting essentially of" language of the instant claims will be construed as equivalent to "comprising". See, e.g., *PPG*, 156 F.3d at 1355, 48 USPQ2d at 1355. It is further taught that the composition is diluted with water and applied to loci such as farms, fields, fruit gardens etc. to control fungi, bacteria, insects and mites (meeting the limitation of claim 7; Col.10, lines 32-42).

Okana et al. do not teach herbicidal compositions containing glyphosates in the amount of 350 grams of acid equivalent per liter of the composition or surfactant amounts of about 20 to about 200 grams per liter of the composition.

Beestman et al. teach of agricultural compositions containing glyphosates and surfactants that fall within the ratios of the claimed invention (meeting the limitation of claims 1 and 2; Col. 4, lines 55-63 and Table 1).

The herbicide composition having a viscosity of less than 140 centipoise is obviously taught in the herbicidal composition of Okana et al. Because the composition of the prior art and the composition of the present claims are comprised of the same components, it is obvious that they share the same physical properties. Patent law states that "products of identical chemical composition can not have mutually exclusive properties." A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

Accordingly, it would have been obvious to one having ordinary skill in the art at the time of the invention to prepare the herbicidal composition containing water, glyphosates (including monomethylamine or dimethylamine) and a cationic quarternary ammonium surfactant) according to the teachings of Okana et al. and to prepare it in a concentrated solution in the optimized ratios taught by Beestman et al. The motivation to combine the two references into a concentrated solution is to provide a liquid herbicidal concentrate that is excellent in stability.

### ***Conclusion***

Claim 5 is free of the art.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Renee Claytor whose telephone number is 571-272-8394. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Renee Claytor



SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER